

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) Cause No. 1:14-cr-0245-TWP-TAB-01
)
)
KENNETH TURNIPSEED,)
)
Defendant.)

REPORT AND RECOMMENDATION

On January 19, 2017, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on December 28, 2016. Defendant Turnipseed appeared in person with his appointed counsel William Dazey. The government appeared by Kristinia Korobov, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jason Phillips.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Turnipseed of his rights and provided him with a copy of the petition. Defendant Turnipseed waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Turnipseed admitted violations 1, 2, 3, and 4. [Docket No. 43.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>On December 16, 2016 and January 9, 2017, Mr. Turnipseed provided a urine specimen which tested positive for amphetamine. He admitted use of methamphetamine.</p> <p>As previously reported to the Court, on November 16, 18, and 20, 2016, Mr. Turnipseed provided urine specimens which tested positive for amphetamine. He admitted using methamphetamine on or about those dates. On November 30, 2016, Mr. Turnipseed self-reported using methamphetamine on November 24, 2016. He subsequently signed an Admission Report of Positive Urinalysis form. In addition, on November 30, 2016, and December 5 and 11, 2016, Mr. Turnipseed provided urine specimens which tested positive for amphetamine. He admitted using methamphetamine on or about those dates.</p>
2	<p>“The defendant shall participate in a substance abuse treatment program at the direction of the probation officer, which may include no more than eight drug tests per month. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program. The defendant is responsible for paying a portion of the fees of substance abuse testing and/or treatment in accordance with his ability to pay.”</p> <p>On December 5, 2016, the offender contacted the treatment agency stating he would not be attending the scheduled counseling session “due to work.” In addition, on December 10, 12, 19, 21, and 26, 2016, the offender failed to attend scheduled counseling sessions. Lastly, on October 24, 2016, a payment plan was established instructing the offender to remit monthly payments in the amount of \$75 on November 15, 2016, and December 15, 2016, to be applied toward the \$150 substance abuse treatment co-pay fee. One payment was remitted and the balance due is \$75.</p>
3	<p>“If this judgment imposes a fine or restitution, it is a condition of probation/supervised release that the defendant pay in accordance with the Schedule of Payments sheet of the Judgment and Commitment Order.”</p> <p>On October 24, 2016, a payment plan was established instructing the offender to remit monthly payments in the amount of \$75 beginning December 1, 2016. To date, no payments have been remitted. The special</p>

assessment balance is \$75 (\$125 was paid while the offender was an inmate in the Bureau of Prisons) and the fine balance remains \$1,500.

4 **“You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.”**

The offender has failed to obtain or provide document any type of legitimate employment.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is II.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 6 to 12 months' imprisonment.

5. The parties jointly recommended a modification of defendant's current supervised release conditions to include up to 180 days at the Volunteers of America.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be modified as follows:

1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be

engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.

7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.
12. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Justification: This condition will address the defendant's history of substance abuse.
13. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage. Justification: This condition will address the defendant's history of substance abuse.
14. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will help ensure compliance with a drug-free lifestyle.
15. You shall pay the costs associated with the following imposed conditions of supervised release/probation, to the extent you are financially able to pay: substance abuse treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment. Justification: This condition will require him to invest into his rehabilitation.
16. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or

software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches. Justification: The offender has a history of drug use, drug distribution, and possessing a firearm. This condition will assist the probation officer in monitoring compliance and protection of the community.

17. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court. Justification: This condition is recommended to assist the probation officer in supervising the offender and ensure the safety of the community. Due to Mr. Turnipseed's criminal history, the aforementioned conditions are prudent.
18. You shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is recommended to assist the probation officer in supervising the offender and ensure the safety of the community. Due to Mr. Turnipseed's criminal history, the aforementioned conditions are prudent.
19. You shall reside in a residential reentry center for a term of up to 180 days. You shall abide by the rules and regulations of the facility.

The defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney on January 19, 2017 and January 20, 2017 [Dkt. 48]. The defendant is to self-report to the Volunteers of America as instructed by the probation officer.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 01/25/2017


Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

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